Office-Supreme Court, U.S.
FILED
AUG 12 1968
JOHN F. DAVIS, CLERK

No. 284

In the Supreme Court of the United States

OCTOBER TERM, 1968

LOUISIANA EDUCATION COMMISSION FOR NEEDY CHILDREN, ET AL., APPELLANTS

v.

BRYAN POINDEXTER, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

ERWIN N. GRISWOLD,
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MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States moves that the judgment of the district court entered on March 19, 1968, be affirmed.

OPINIONS BELOW

The opinion of the three-judge district court and the order from which this appeal is taken (J.S. Appendix B) are not yet reported. This Court's denial of appellants' motion for leave to file a petition for a writ of prohibition is reported at 390 U.S. 939. Two earlier opinions of the district court in related cases are reported at 258 F. Supp. 158 (*"Poindexter I"*)

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and 275 F. Supp. 833 (*"Poindexter II"*), affirmed, 389 U.S. 571.

JURISDICTION

The order of the three-judge district court was entered on March 19, 1968. A notice of appeal was filed on April 19, 1968. The Jurisdictional Statement was filed on July 12, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

QUESTION PRESENTED

Whether the district court was correct in holding that Act 99 of the 1967 Louisiana Legislature providing financial aid for tuition to attend private schools is unconstitutional as a further attempt by the legislature to provide State support for a system of racially segregated schools.

STATEMENT

The original complaint in this action was filed on June 29, 1966, as a class action on behalf of Negro school children in Louisiana. The plaintiffs challenged the constitutionality of Act 147 of the 1962 Session of the Louisiana Legislature (L.S.A.–R.S. § 17: 2951–2959) which provided tuition grants for students attending certain private schools. The United States subsequently intervened as a party plaintiff pursuant to Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) alleging that Act 147 had been designed to provide segregated schools for white pupils and that its operation resulted in the establishment of a State-supported segregated school system in Louisiana.

After a full hearing on the merits, the district court held Act 147 unconstitutional and enjoined its

further enforcement. 275 F. Supp. 833. The court found (*id.* at 835) that "[t]he purpose and natural or reasonable effect of this law are to continue * * * segregated, privately operated schools for white children," and that it was unconstitutional because it amounted to "affirmative and purposeful state aid promoting private discrimination." This Court affirmed that judgment. (389 U.S. 571.)

On June 15, 1967, the State of Louisiana enacted Act 99, which was to go into effect if and when the earlier tuition-grant legislation was invalidated. Act 99 authorizes State tuition grants to private non-sectarian elementary and secondary schools attended by children who are eligible to attend public schools, and creates the Louisiana Education Commission for Needy Children to administer the program. The amount of the grant varies both according to net income and according to the number of dependents. It provides a maximum grant of $350 on behalf of each student for a school year. The Act authorizes a transfer of amounts not to exceed $3,500,000 during any fiscal year from the Public Welfare Fund to the schools.

After the new statute went into effect, the United States moved to file a supplemental complaint under Rule 15(d) of the Federal Rules of Civil Procedure, adding the Louisiana Education Commission for Needy Children and its members as defendants and asking that Act 99 be declared unconstitutional and the defendants enjoined from carrying it out. The district court held that the complaint was properly

filed and considered the claim on the merits (J.S. Appendix B, pp. 3–5).

Referring to the history of grant-in-aid legislation in Louisiana detailed in its opinion in *Poindexter II*, the court said (J.S. Appendix B., p. 8):

> Act 99 is indeed more sophisticated than Act 147; more so also than the two earlier Louisiana grant-in-aid laws, Act 258 of 1958 and Act 3 of 1960. But * * * the Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." * * *

The district court then quoted from its opinion in *Poindexter II* (J.S. Appendix B., p. 12):

> The inevitable effect of the tuition grants was the establishment of maintenance of a state-supported system of segregated schools for white children, making the state a party to organized private discrimination. * * * The tuition grants damage Negroes by draining students, teachers, and funds from the desegregated public school system into a competitive, segregated "quasi-public" school system. The stamp of State approval of "white" schools perpetuates the open humiliation of the Negro implicit in segregated education. 275 F. Supp. at 845, 851.

The court also found that "[t]he purpose of Act 99 of 1967, like the purpose of its predecessors, is to give state aid to private discrimination. * * * The continuing effect is to endanger the public school system and equal educational opportunities for Negroes" (J.S. Appendix B, p. 2). It concluded, "Act 99 must go the way of its predecessors. Its

'unlawful end and necessary effect' is 'to establish and maintain a system of segregated schools for white children, in violation of the equal protection clause' " (J.S. Appendix B, p. 2).

ARGUMENT

1. The district court properly concluded that Act 99 was nothing more than the fourth in a series of tuition-grant statutes enacted by the Louisiana Legislature to encourage and support racially segregated private schools which white students in the State could attend in place of the desegregated public schools. The striking similarities between the program established by Act 99 and that created by its unconstitutional predecessors (see J.S. Appendix B, p. 12) and the fact that Act 99 was characterized as a "stand-by" for the earlier legislation by its sponsors more than adequately support the district court's conclusion.

2. It was proper for the court below to consider the full facts and circumstances surrounding enactment of the legislation in determining its constitutionality. See, *e.g.*, *Grosjean* v. *American Press Company*, 297 U.S. 233; *Miller* v. *Milwaukee*, 272 U.S. 713; *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 231; *Cooper* v. *Aaron*, 358 U.S. 1; *Louisiana* v. *United States*, 380 U.S. 145. Appellants' claim that the district court erred in considering public statements made by legislators or newspaper reports concerning the challenged legislation was made and rejected in *Poindexter II*, which was summarily affirmed by this Court. 389 U.S. 571. Statements by

sponsors of legislation are, of course, traditionally relied upon in assessing a statute's legislative history. *Humphrey's Executor* v. *United States,* 295 U.S. 602; *Standard Oil Company* v. *United States,* 221 U.S. 1. The newspaper accounts, accompanied by the testimony of the authors as to their presence at the event and the accuracy of their reports, were properly admitted since Louisiana maintains no official records of legislative debates or committee proceedings and no verbatim transcript is available. See, *e.g., United States* v. *Louisiana,* 225 F. Supp. 353 (E.D. La.), affirmed, 380 U.S. 145; *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649 (E.D. La.), affirmed *per curiam,* 368 U.S. 515; *Davis* v. *Schnell,* 81 F. Supp. 872 (S.D. Ala.), affirmed *per curiam,* 336 U.S. 933.

3. Appellants' assertion that the district court was personally biased against them was impliedly rejected by this Court in denying appellants leave to file a petition for a writ of prohibition. 390 U.S. 939. In any event, the alleged bias relates not to personal prejudice of any kind but to remarks assertedly made by the judges in ruling on the issues in the case. Adverse rulings are not grounds for a motion to disqualify. *Ex Parte American Steel Barrel Company,* 230 U.S. 35, 43–44.

4. The district court was correct in rejecting the "preponderant support" standard adopted in *Griffin* v. *State Board of Education,* 239 F. Supp. 560 (E.D. Va.), as it had in *Poindexter II.* The record in this case established that the State had deliberately devised the various forms of tuition grants to support segregated schools. It cannot avoid the consequences of that

support simply because it amounts to less than fifty percent of the schools' costs.

5. The district court was also correct in rejecting, again for the second time, the appellants' contention that the definition of "public school" contained in Title IV of the Civil Rights Act of 1964 controlled the outcome of this proceeding. By its own terms, that definition is applicable only to Title IV. It does not purport to define every type of institution with which the State may be unconstitutionally involved in racial discrimination.

CONCLUSION

For the reasons stated, the judgment of the court below should be affirmed.

Respectfully submitted.

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AUGUST 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968